

REMARKS

This Amendment is being filed in response to the Office Action dated November 11, 2007. Claims 7-14 are currently pending in the application, all of which stand rejected. Of these, claims 7, 9, 11 and 13-14 are independent. By this Amendment, independent claims 7, 9, 11 and 13-14 have been amended. No new matter has been added. Applicants respectfully submit that the amendments have been made to better clarify the invention as claimed and Applicants respectfully request reconsideration in light of the amendments and remarks herein.

Claim Objections and Rejection under 35 U.S.C. §112

Claims 8 and 10 are objected to and rejected under 35 U.S.C. §112 as being indefinite because, according to the Examiner, claims 8 and 10 are directed to the method of making a bag rather than to the method of attaching a straw package onto a bag. In the interest of expediting prosecution, without addressing the merits of the rejection, Applicants hereby cancel claims 8 and 10. Accordingly, the rejection has been rendered moot.

Double Patenting

Claims 7-10 stand rejected under the nonstatutory double patenting rejection based on U.S. Patent No. 4,584,046 to Geyssel ("Geyssel"). The Examiner states that claims 7-10 are patentably indistinct from claims 1, 3, 7, 9, 10, 12, 15 and 17 of Geyssel. Applicants respectfully submit that Geyssel does not claim providing a foil bag having film pieces attached to create a triangular cross section or providing a plurality of straws having adhesives thereon and a cover strip covering the adhesive as required in claims 7-10 as amended herein. At least for these reasons, Applicants respectfully maintain that claims 7-10 are patentably distinct from claims 1, 3, 7, 9, 10, 12, 15 and 17 of Geyssel and respectfully request withdrawal of the rejection.

Rejection under 35 U.S.C. §102

Independent claims 7, 9, 11, 13 and 14 stand rejected under 35 U.S.C. §102(b) as being anticipated by Geyssel. Applicants respectfully submit that Geyssel fails to teach or disclose attaching a straw package to a “foil bag having a triangular cross section” as recited in claims 7, 9, 11, 13 and 14 as amended herein. Rather, Geyssel is directed to bottles, bags, etc. that have a more defined shape and which provides more resistance to pressure than a foil bag as claimed. Moreover, whereas Geyssel mentions a “bag”, Geyssel does not mention or suggest a foil bag “having a triangular cross section” wherein two pieces of film are connected along three edges, and further fails to teach or suggest “straw packages having an adhesive thereon and a cover strip covering the adhesive” as claimed.

Furthermore, at least because Geyssel is directed to a fundamentally different package from foil bags as claimed herein, Geyssel fails to render the claims obvious. As claimed, the foil bags have walls comprising film that are inherently flexible. Therefore, when pressure is applied on the wall of the foil bags, for example when a straw is being attached thereto, the wall typically withdraws from the source of pressure, thus requiring greater pressure to attach the straw thereto compared to a more resistant or rigid material, such as a bottle or rectangular package as described in Geyssel.

Moreover, Applicants respectfully submit that Geyssel is directed to packages that are sufficiently balanced to withstand the pressure from the device as the articles are being affixed thereto. Referring to FIG. 1-10, the straw of Geyssel is attached to the package from the side of the conveyor belt. Referring to the examples illustrated, the packages of Geyssel have a quadrilateral cross section, which are generally more stable than a foil bag as claimed. Therefore, the package of Geyssel can withstand the pressure from the side of the conveyor belt

as the straw is being attached thereto. In contrast, the foil bags as claimed comprise two rectangular pieces of film connected to each other along three edges, and thus are not as balanced and more susceptible to tipping over when pressure is applied from the side. At least because such foil bags as claimed would introduce more shortcomings than the packages of Geyssel when attaching a straw thereto, it would not have been obvious to revise Geyssel to provide the foil bag as claimed. Rather, Geyssel thus teaches away from a foil bag as claimed.

Applicants respectfully submit that the preamble should be a positive limitation and considered in construing the claims. As the Federal Circuit states, a preamble should be considered as a positive limitation when it imparts essential structure to the claims and breathes life and meaning into the claims. See Catalina Marketing Int'l v. Coolsavings.com, Inc., 289 F.3d 801, 808 (Fed. Cir. 2002); Corning Glass Works v. Sumitomo Electric U.S.A., Inc., 868 F.2d 1251, 1257 (Fed. Cir. 1989). The preambles of the independent claims require a “foil bag having a triangular cross section.” The preambles of independent claims 9, 11 and 13 further require that the foil bag has “a first rectangular film piece connected to a second rectangular film piece along three edges thereof.” The claims require providing a foil bag, positioning the foil bag on a conveyor belt and attaching a straw package thereto. Therefore the preamble, which provides essential structure to the foil bag, also provides essential structure to the claims and thus should be considered a positive limitation.

Rejection under 35 U.S.C. §103(a)

Claim 12 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Geyssel in view of U.S. Patent No. 4,572,758 to Wild (Wild). Applicants respectfully maintain that Wild fails to remedy the shortcomings of Geyssel, and also fails to teach or suggest a “foil bag having a triangular cross section” and two pieces of film connected “along three edges thereof” as

Application Serial No. 09/690,409
Amendment Dated April 11, 2008
Responsive to November 14, 2007 Office Action

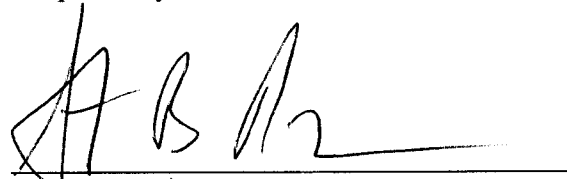
claimed. In contrast, Wild is directed toward “cans or folded paper container bags,” which is more rigid and balanced than the foil bags as claimed. Accordingly, Applicants respectfully submit that Geyssel and Wild, whether taken alone or in combination, fail to render claim 12 unpatentable.

CONCLUSION

Applicants respectfully submit that all outstanding rejections have been addressed and are now either overcome or moot. Favorable consideration and prompt allowance of this application is respectfully requested. In the event that there are any questions, or should additional information be required, please do not hesitate to contact Applicants' attorney at the number listed below.

No fee, other than the two-month extension of time submitted herewith, is deemed necessary in connection with the filing of this Amendment. However, if any fee is due the amount of such fee may be charged to Deposit Account No. 19-4709.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. B. Pokotilow', is written over a horizontal line.

Steven B. Pokotilow
Reg. No. 26,405
Attorney for Applicants
Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, New York 10038
(212) 806-5400